

## SENATE BILL NO. 114

INTRODUCED BY TESTER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CREATING A FELONY FOR TRANSACTING INSURANCE WITHOUT A CERTIFICATE OF AUTHORITY UNLESS OTHERWISE ALLOWED UNDER THE INSURANCE CODE~~; SPECIFYING THE CRIME AS A KNOWING REPRESENTATION OF OR ASSISTANCE TO AN UNAUTHORIZED INSURANCE PRODUCER; DESIGNATING AS INSURANCE FRAUD THE TRANSACTION OF INSURANCE WITHOUT A VALID CERTIFICATE OF AUTHORITY; MAKING INSURANCE FRAUD OR PRESENTATION OF A FALSE INSURANCE APPLICATION, CLAIM, OR PROOF OF LOSS A CRIME OF DECEPTIVE PRACTICES CLARIFYING LANGUAGE RELATING TO INSURANCE OFFENSES; AND AMENDING SECTIONS ~~33-1-1202, 33-1-1211, 33-1-1302, 33-2-101, 33-2-104, AND 33-18-401, AND 45-6-317,~~ MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-1-1202, MCA, is amended to read:

**"33-1-1202. Insurance fraud.** ~~(1) A person commits the act~~ OFFENSE of insurance fraud when the person:

~~(1)(A) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;~~

~~(2)(B) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;~~

~~(3)(C) presents or causes to be presented to or by an insurer, purported insurer, producer, or administrator, as defined in 33-17-102, a materially false or altered application of insurance;~~

~~(4)(D) accepts premium money knowing that coverage will not be provided;~~  
~~(5)(E) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; or~~  
~~(6)(F) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer.; or~~  
~~(7)(G) acts as an insurer or transacts insurance in this state except as authorized by a subsisting certificate of authority issued by the commissioner as provided in 33-2-101 IN THIS CODE UNLESS:~~  
~~(I) AUTHORIZED TO ACT AS AN INSURER OR TO TRANSACT INSURANCE IN THIS STATE BY A SUBSISTING CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER PURSUANT TO 33-2-101;~~  
~~(II) AUTHORIZED OR LICENSED BY THE COMMISSIONER TO ACT AS AN INSURER OR TO TRANSACT INSURANCE IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER OR PRODUCER PURSUANT TO CHAPTER 2, PART 3, OF THIS TITLE;~~  
~~OR~~  
~~(III) LICENSED BY THE COMMISSIONER TO TRANSACT INSURANCE IN THIS STATE AS AN ADJUSTER, ADMINISTRATOR, CONSULTANT, OR PRODUCER PURSUANT TO CHAPTER 17 OF THIS TITLE.~~  
~~(2) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION COMMITS THE OFFENSE OF INSURANCE FRAUD AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR BOTH."~~

~~**Section 2.** Section 33-1-1211, MCA, is amended to read:~~  
~~**"33-1-1211. Penalties CIVIL PENALTIES.** (1) If, after a hearing conducted under 33-1-701, the commissioner determines that a person has committed insurance fraud, the commissioner may:~~  
~~(a) impose any penalty provided for in 33-1-317; or and~~  
~~(b) require the person to pay the costs of the proceeding.~~  
~~(2) Any Subject to 46-11-410, a person who purposely or knowingly commits insurance fraud commits the offense of theft under 45-6-301 and deceptive practices under 45-6-317.~~  
~~(3)(2) In addition to any other penalties, the commissioner shall require a person who commits insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result of the insurance fraud."~~

~~**Section 3.** Section 33-1-1302, MCA, is amended to read:~~

~~"33-1-1302. Insurance fraud -- insurer. (1) A person commits the act of insurance fraud when in the course of offering or selling insurance, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it the material fact is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.~~

~~(2) The commissioner may, after having conducted conducting a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).~~

~~(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income or refund received by the victim from the insurance.~~

~~(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.~~

~~(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.~~

~~(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.~~

~~(7) A Subject to 46-11-410, a person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds commits the offense of theft and is punishable, as provided in 45-6-301, and the and deceptive practices, as provided in 45-6-317, and is punishable as provided in 45-6-301 and 45-6-317. The commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.~~

~~(7) A PERSON WHO KNOWINGLY MISAPPROPRIATES AN INSURANCE PREMIUM PAID BY OR PROCEEDS DUE AN INSURED IS GUILTY OF A FELONY AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR BOTH. THE COMMISSIONER MAY REFER A SUSPECTED OFFENSE TO THE ATTORNEY GENERAL OR THE APPROPRIATE COUNTY ATTORNEY.~~

**Section 1.** Section 33-2-101, MCA, is amended to read:

1        **"33-2-101. ~~Certificate of authority~~ AUTHORIZATION CERTIFICATE OF AUTHORITY required --**  
 2        **administrative and criminal penalties.** ~~(1) No (a) Except as provided in subsection (1)(b), a person shall act~~  
 3        ~~acting as an insurer and no an insurer shall transact transacting insurance in this state except as authorized by~~  
 4        ~~must have a subsisting certificate of authority issued to it by the commissioner, except as to such;~~  
 5        ~~—— (b) Subsection (1)(a) does not apply to transactions as that are expressly otherwise provided for allowed~~  
 6        ~~in this code. (1) A PERSON MAY NOT ACT AS AN INSURER AND AN INSURER MAY NOT TRANSACT INSURANCE IN THIS STATE~~  
 7        ~~EXCEPT AS AUTHORIZED IN THIS CODE. (1) EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS CODE, A PERSON ACTING~~  
 8        ~~AS AN INSURER AND AN INSURER TRANSACTING INSURANCE IN THIS STATE MUST HAVE A SUBSISTING CERTIFICATE OF~~  
 9        ~~AUTHORITY ISSUED BY THE COMMISSIONER.~~

10        (2) ~~No An~~ insurer ~~shall have or maintain that has or maintains~~ in Montana any office, representative,  
 11        or ~~other facilities~~ facility for the solicitation or servicing of any kind of insurance in any other state ~~unless it is then~~  
 12        must be authorized to transact the same kind of insurance in this state.

13        (3) ~~A person convicted of purposely or knowingly violating~~ WHO KNOWINGLY VIOLATES this section is guilty  
 14        of a felony ~~AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED~~  
 15        ~~\$100,000, OR BOTH, PUNISHABLE AS PROVIDED IN 46-18-213 and in addition is subject to the civil penalty provided~~  
 16        in 33-1-317."

17  
 18        **Section 2.** Section 33-2-104, MCA, is amended to read:

19        **"33-2-104. Representing or aiding unauthorized insurer prohibited.** (1) ~~No A~~ person ~~shall~~ in this  
 20        state may not directly or indirectly act as insurance producer for, or otherwise represent or aid on behalf of  
 21        another, any insurer not ~~then~~ authorized to transact insurance in this state in the solicitation, negotiation, or  
 22        effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment  
 23        of losses, collection of premiums, or in any other ~~manner in the~~ transaction of insurance with respect to subjects  
 24        of insurance resident, located, or to be performed in this state.

25        (2) This section ~~shall~~ does not apply to:

26        (a) acceptance of service of process by the commissioner under 33-1-613; or  
 27        (b) surplus lines insurance and other transactions ~~as to for~~ for which a certificate of authority is not required  
 28        of an insurer as stated in 33-2-102.

29        (3) ~~Any person convicted of purposely or knowingly violating this section shall upon conviction thereof~~  
 30        be is guilty of a felony.

~~(3) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A FELONY AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR BOTH PUNISHABLE AS PROVIDED IN 46-18-213."~~

**Section 3.** Section 33-18-401, MCA, is amended to read:

**"33-18-401. False application, claim, and proof of loss -- criminal penalty.** (1) An insurance producer, examining physician, applicant, or other person who knowingly ~~or willfully~~ purposely makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months, or both ~~such~~ fine and imprisonment at the discretion of the court.

(2) ~~An insurance producer, examining physician, applicant, or other (a) Subject to 46-11-410, a A~~ person who, for the purpose of obtaining any money or benefit, knowingly ~~or willfully~~ purposely presents or causes to be presented a false or fraudulent claim or any proof in support of ~~such a false or fraudulent~~ claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of ~~such a false or fraudulent~~ claim, is guilty of ~~a crime theft under 45-6-301 or deceptive practices under 45-6-317, and a A county attorney may initiate criminal proceedings against him that~~ A FELONY AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR BOTH THEFT UNDER 45-6-301. EITHER A COUNTY ATTORNEY OR THE ATTORNEY GENERAL MAY PROSECUTE THE PERSON.

(b) As used in subsection (2)(a), "person" includes but is not limited to an insurance producer, examining physician, or applicant."

~~**Section 7.** Section 45-6-317, MCA, is amended to read:~~

~~**"45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when the person purposely or knowingly:~~

~~(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;~~

~~(b) makes or directs another to make a false or deceptive statement addressed to the public or any~~

1 ~~person for the purpose of promoting or procuring the sale of property or services;~~

2 ~~—— (c) makes or directs another to make a false or deceptive statement to any person respecting the~~  
3 ~~financial condition of the person making or directing another to make the statement for the purpose of procuring~~  
4 ~~a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan~~  
5 ~~or credit regarding that person's financial condition; or~~

6 ~~—— (d) obtains or attempts to obtain property, labor, or services by any of the following means:~~

7 ~~—— (i) using a credit card that was issued to another without the other's consent;~~

8 ~~—— (ii) using a credit card that has been revoked or canceled;~~

9 ~~—— (iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;~~

10 ~~—— (iv) using the pretended number or description of a fictitious credit card;~~

11 ~~—— (v) using a credit card that has expired when the credit card clearly indicates the expiration date;~~

12 ~~—— (vi) committing insurance fraud as provided in 33-1-1202 or 33-1-1302; or~~

13 ~~—— (vii) presenting a false insurance application, claim, or proof of loss as provided in 33-18-401(2);~~

14 ~~—— (2) A person convicted of the offense of deceptive practices shall be fined an amount not to exceed~~  
15 ~~\$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices~~  
16 ~~are part of a common scheme or the value of any property, labor, or services obtained or attempted to be~~  
17 ~~obtained exceeds \$1,000, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the~~  
18 ~~state prison for a term not to exceed 10 years, or both."~~

19 - END -